

BEFORE THE CITY COUNCIL OF THE CITY OF CLAIRTON  
ALLEGHENY COUNTY, PENNSYLVANIA

IN RE: Nello Fiore

APPLICATION FOR CURATIVE AMENDMENT

TO: THE MEMBERS OF CITY COUNCIL, CITY OF CLAIRTON

Nello Fiore hereby submits this Petition for Curative Amendment for his industrial property located at Lafayette Drive Clairton PA, 15025 lot and block 1002-A-40. The applicant proposes that the members of City Council (the "Board") cure the invalidities in the City of Clairton Zoning Ordinance (the "Ordinance") as provided by Section 609.1 of the Pennsylvania Municipalities Planning Code ("MPC") and the City of Clairton Zoning Ordinance Section 337-47, as proposed below.

Nello Fiore's property is over 74 acres of a contiguous tract of land that has been historically used for manufacturing and industrial purposes. However, in a recent offer to purchase the property it was discovered that the zoning designation had been changed to Special Conservation. Section 301 of the Ordinance, entitled, "Special Conservation" provides for single-family residential uses as permitted uses in the. Section 301 also permits residential uses other than single-family as conditional uses subject to the provisions of the City of Clairton Code of Ordinances including, but not limited to, area, size, setback and parking regulations for multi-family and multi-residential uses in the City of Clairton. The Propose of the Special Conservation District as defined by Section 337-17 is "to encourage the continued use of land for

parks, recreation, low density residential uses, the conservation of natural resources and features, and preservation of open space”.

The law clearly states that any change in a properties zoning designation requires notification of the property owner and the posting of the said property. Section 609(2)(i) states that the municipality must notify the property owner of any tract of land or any owner of mineral rights on that tract of land of any zoning changes at least 30 days prior to the date of the public hearing. No such notification was made to Nello Fiore. The failure of the notification of the zoning change creates a defacto regulatory taking of Nello Fiore’s property. In conversations with the City, they admitted that no such notice was given. Additionally, Mr. Fiore submitted a Right to Know Request regarding such information, but no information was received in the response, as it does not exist

The Supreme Court has historically taken a strict approach when applying the Takings Clause of the Fifth Amendment, which provides citizens the protection that private property cannot be taken for public use, without just compensation. The Court has that the purpose of this clause “is designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 123 (1978). There are many factors that the Court considers when analyzing whether a government action, such as a zoning ordinance of a greater restriction in use amounts to a taking. The Court will consider the economic impact of the regulation and particularly where the regulation has interfered with distinct “investment-backed” expectations. *Id.* The Court is more likely to find that a taking through a restrictive land use law will have occurred where an owner of real property has been called upon to sacrifice all economically

beneficial uses in the name of the common good,” and the result is to leave the property economically idle. *Lucas v. South Carolina Coastal Council*, 506 U.S. 1003, 1021 (1992).

The previous use of the property was an Industrial District which permits the manufacturing uses that Nello Fiore is proposing on this parcel and the purpose detailed in Section 337-17 of the Ordinance is “to encourage the continued use of land and buildings for heavy industry”. By preserving the land as open space and preserving the natural resources, the City has egregiously disavowed Nello Fiore of a substantial value of his property without proper notification or compensation. The Property’s current designation now prevents the development of a manufacturing hub and sale of mineral rights. The zoning ordinance has drastically interfered with Mr. Fiore’s investment backed expectations, which resulted in a substantial decreased in value of the real estate. This new ordinance asks Mr. Fiore to become the sole bearer of the public’s burden to further a governmental interest and this harm is the specific harm that the Supreme Court has sought to prevent.

Additionally, all the stated purposes state the “continued use” of the property. Nello Fiore has always used this property for Industrial District purposes. The land was previous strip-mined and used for various manufacturing purposes. This is evidenced by the fact that a “Transitional Mixed Use District” is placed between Nello Fiore’s property and the Residential Districts. Mr. Fiore also owns contiguous land on two borders with Jefferson Hills that are zoned industrial. The Purpose of Transitional Mixed Use District established in Section 337-17 of the Ordinance is to “encourage the continued use and reuse of land and buildings in areas surrounding the Central Business District for a compatible mixture of variety of commercial businesses and residential uses to provide a transition between the CBD and the adjacent residential

neighborhoods". No such Transitional District would be needed to buffer Residential Districts from Special Conservation.

Nello Fiore wishes to use his property according to his "investment backed" expectations that were consistent with the property being zoned for Industrial Use. Mr. Fiore intends to market the property to be used for light manufacturing, a grocery store, shopping district and all other uses allowable in an Industrial District. Therefore, desiring lawful use and enjoyment of its property rights, and wishing to comply with the Ordinance, Nello Fiore, is petitioning City Council for the City of Clairton to revise the Ordinance map to reflect that the property owned by Mr. Fiore located at Lafayette Drive, Clairton, PA, 15025 lot and block 1002-A-40 be designated as an Industrial District to reflect the continued and intended use of the property. The Petitioner requests that this be done in compliance with the MPC and the City of Clairton Zoning Ordinance to insure that his property rights are protected.

Date: 10-24-16

Signature of Applicant's Attorney:

Krishna A. DiMascio  
Krisha A. DiMascio, Esquire